IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

WP(C).No. 16028 of 2004(G)

PETITIONER:

V.K.BALAKRISHNAN S/O.KUNHIRAMAN,
AGED 52 YEARS, VENGAPETTAKANDY HOUSE,
POST PERAMBRA, KOZHIKODE.
(FORMER POLICE CONSTABLE)

BY ADV. SRI.K.MOHANAKANNAN
SRI.GEORGE ABRAHAM
SRI.P.NAIJAL KUMAR

RESPONDENTS:
---

1. STATE OF KERALA, REPRESENTED BY THE
HOME SECRETARY, TRIVANDRUM.

2. INSPECTOR GENERAL OF POLICE
(NORTHERN RANGE), KOZHIKODE.

3. COMMISSIONER OF POLICE, CALICUT CITY,
KOZHIKODE DISTRICT.

BY GOVERNMENT PLEADER SRI.K.V.MANOJKUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.C.NO.16028/04

A P P E N D I X

PETITIONER'S EXHIBITS :

EXT.P1 : TRUE COPY OF SHOW CAUSE NOTICE DT. 17.8.1989 ISSUED TO THE PETITIOENR BY THE CITY POLICE COMMISSIONER, KOZHIKODE.

EXT.P2 : TRUE COPY OF THE ORDER OF INSPECTOR GENERAL OF POLICE, NORTHERN RANGE IN REF.NO.A.2(A)22903/89-5/NR DT. 6.6.1991.

EXT.P3 : TRUE COPY OF THE SHOW CAUSE NOTICE DT. 16.9.1992 ISSUED BY THE THIRD RESPONDENT TO THE PETITIONER.

EXT.P4 : TRUE COPY OF GO(RT) NO.1109/98(HOME) DT. 18.3.1998.

EXT.P5 : TRUE COPY OF THE AFFIDAVIT SWORN TO BY THE COUNSEL FOR THE PETITIONER DT. 24.8.2004.

EXT.P6 TRUE COPY OF THE REVIEW PETITION (WRONGLY STATED AS REVISION PETITION) FILED BY THE PETITIONER BEFORE THE HON'BLE MINISTER DT. 6.11.1996.

TGS

KURIAN JOSEPH J.

W.P.(C) No.16028 of 2004

Dated 23rd August, 2007.

J U D G M E N T

Petitioner is aggrieved by the order passed in a disciplinary action initiated against him on the ground of bigamy. It is seen from Ext.P1 that the City police Commissioner had proposed a punishment of termination from service. However, it is seen that the Commissioner had imposed a punishment only of compulsory retirement and that was appealed against, leading to Ext.P2 order passed by the appellate authority. In Ext.P2, the appellate authority remanded the matter to the City Police Commissioner to conduct a further enquiry as to whether there was a valid marriage performed by the petitioner with Saraswathy, when the former wife Kamalakshy was alive. On the basis of the enquiry, it appears, the City Police Commissioner proposed a punishment of dismissal from service on the very same set of facts regarding bigamy. That is confirmed by the Government in Ext.P4.

2. The contention of the petitioner is that the enquiry proposed was only to impose a punishment of compulsory

retirement. It is the petitioner who took up the matter in appeal and the appellate authority had remanded the matter for further enquiry only as to the validity of the marriage. The finding that the petitioner had bigamous relationship with Saraswathy, when his wife Kamalakshy was alive was the charge proved when the punishment of compulsory retirement was initially proposed and the punishment of dismissal was proposed after the remand. If as a matter of fact, the appointing authority thought to impose only a punishment of compulsory retirement, on the proved charge of bigamy, there cannot be a harsher punishment on the petitioner for the only reason that he pursued the matter in appeal. At any rate, it has to be seen from Ext.P2 appellate order that the said authority had not left open the scope for harsher punishment. In that view of the matter, there cannot be a harsher punishment than compulsory retirement. I quash the impugned orders declaring that the punishment imposed on the petitioner is only compulsory retirement as originally proposed.

KURIAN JOSEPH, JUDGE.

tgs